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## NEGOTIATING WRITERS' RIGHTS: FREELANCE CULTURAL LABOUR AND THE CHALLENGE OF ORGANIZING

*Nicole S. Cohen*<sup>1</sup>  
PhD Candidate,  
Graduate Program in Communication and Culture,  
York University,  
Toronto, Ontario, Canada

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### ABSTRACT

As media companies grow in profits and economic significance, workers in these industries are experiencing precarious forms of employment and declining union power. This article provides insight into the experiences of a growing segment of the media labour force in Canada: freelance writers, who face declining rates of pay, intensified struggles over copyright, and decreasing control over their work. At the same time, freelancers are currently experimenting with various approaches to collective organizing: a professional association, a union, and an agency-union partnership. As part of a larger project on freelance writers' working conditions and approaches to organizing, this article provides an overview of three organizational models and raises some early questions about their implications.

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### INTRODUCTION

Despite a recent spate of layoffs and laments of financial crisis, media industries, including Canada's, remain profitable, powerful economic actors (OMDC 2010; Winseck 2010; Statistics Canada 2011a). Media workers, however, are experiencing precarious forms of employment and eroding union power (Nies and Pedersini 2003; Dueze 2007; PWAC 2006; Walters, Warren and Dobbie 2006). In particular, journalism—a once secure, well-remunerated form of labour, thanks largely to a long history of unionization of staff journalists—has become an increasingly insecure form of work. Corporate restructuring, including concentration, convergence, and the adoption of lean production methods, has combined with processes of digitization and the growth of online publishing to produce new business models and aggressive management practices. As a result, the constitution of media labour has rapidly begun to mirror precarious forms of employment in other sectors. And, like

workers in other sectors, media workers are currently undertaking efforts to make sense of the changes they face and to determine the most effective ways to address them.

This article provides insight into the experiences of a growing segment of the media labour force in Canada: freelance writers, or self-employed journalists who sell articles or editorial services to publications (including magazines, newspapers, websites, and books) or to clients (corporate, government, and non-profit) that do not employ them. While this form of employment was once a choice made by a small cohort of writers seeking autonomy and control over their work, freelancing is rapidly becoming the only option available for those who want to work in media, particularly for those who want to write (McKercher 2009; Nies and Pedersini 2003; Walters, Warren and Dobbie 2006).

Media firms' evolving practices over the past twenty years have brought dramatic changes to writers' incomes and control over their work. Although freelance writing for newspapers and magazines has historically been low-paid work (Barbour 1982; Harrison 1982; Peterson 1964), publishers' rates of pay have remained stagnant since the 1970s. In 2005, Canadian freelancers earned an average of just over \$24,000 before tax (PWAC 2006, 12).<sup>2</sup> In a recent survey I conducted of Canadian freelance writers (71 percent of whom listed freelance writing as their main job), 45 percent reported earning under \$20,000 from writing in 2009.

Most publishers in Canada have grown into or have been absorbed by converged media chains: large corporations that control a range of integrated media properties, hungry for content that can be re-purposed for a variety of media platforms. In the past, freelance writers rarely received contracts for assignments. Now, large media companies present writers with lengthy contracts claiming bundles of rights to exploit writers' works in multiple formats, including future rights to works in formats that have yet to be invented, without extra compensation (D'Agostino 2010). Most freelance writers have neither individual nor collective power to negotiate these contracts.

As journalism shifts to online formats, working writers face a growing challenge to their craft and to their livelihoods: a push for free content, which takes multiple forms. Free content is solicited from "citizen" journalists, from scores of unpaid interns working full-time for no pay (and replacing entry-level employees), and from user-generated content on both new media sites and traditional news outlets, most recently *The London Free Press* (O'Reilly 2011). Free content has become publishers' preferred source of revenue, a fact that was made clear in February 2011, when news site and content aggregator The Huffington Post, which does not pay the thousands of bloggers who provide its content, was acquired by media giant AOL for US\$315 million, with no payout to contributors.<sup>3</sup> It is becoming alarmingly common to pay writers for their work with little more than 'exposure,' which has had a generalized effect of depressing

wages, increasing the pool of writers competing for work, and devaluing this form of labour.

Freelance writers are not unique in facing economic insecurity and declining control over their work. What is significant, however, is the heightened attention writers are paying to their collective condition and the range of approaches to organizing with which they are experimenting. As writers' awareness of their position as workers grows, extending beyond their traditional identification as professionals, journalists, or even artists, how they choose to organize will be instructive to workers in other cultural sectors.

Journalists employed at North American newspapers began collectively organizing in the 1930s and 1940s to regulate pay and working conditions and to improve their occupational status (Leab 1970; Deck 1988), but Canadian freelance writers have not been part of these unions. For one, they have existed outside the boundaries of a regulated employment relationship. Legally classified as self-employed workers or independent contractors (despite the fact that many freelancers are in fact economically dependent on one organization), freelance writers are "outside the ambit of labour protection and collective bargaining," assumed to be entrepreneurs who do not require legal protection (Fudge 2003: 36-7). In addition, Canadian labour law does not typically support multiple-employer bargaining (although creative worker unions in the film and television industries are notable exceptions and provide a viable model for freelance writers).<sup>4</sup> Freelance workers are difficult to organize, and freelancing used to be an atypical form of employment in the media industries—it is likely that until recent years there have not been enough freelancers to make organizing this cohort worthwhile for unions. Because of an inability to access and in some cases an aversion to union membership, the vast majority of freelance writers have learned to rely on individual coping strategies to address challenges they face.

Although there have been various writer-led initiatives and individual successes over the years, as a group, freelance writers have been unable to effectively defend themselves against powerful publishers. Existing organizations have a history of advocacy and have tried boycotts, lobbying, lawsuits, and building writer networks, but writers have stopped short of collective bargaining for minimum scale agreements.<sup>5</sup> Writers and unions have recently begun rethinking traditional approaches to writers' organizations and ways to effectively gain power. In what follows, I provide an overview of three organizational models that have emerged to address freelance writers' struggles: the professional association model, a union, and an agency-union partnership. While it is too early to assess the effectiveness of these organizations, it is useful to consider their approaches and freelancers' attitudes toward them in light of the challenges involved with organizing these workers.

By comparing writers' organizing models, it becomes clear that the approaches writers favour tend to reinforce notions of professionalism and a

preference for a service-based organization. This approach has not given freelancers the power required to effectively resist the challenges they face and to defend themselves against corporations' changing business practices. The logic underpinning this organizational model—which emphasizes individualization, reinforces competition, and remains committed to cordial relations with industry—can mask relations of exploitation. This history has meant that as magazines become part of large media conglomerates, freelance journalists find their power in decline, along with levels of pay and quality of work. A union established for the purpose of collective bargaining, following examples of freelance worker unions in the film and television industries, could be the most effective way to challenge powerful publishers. However, there are challenges to achieving this form of collective organization. These challenges are related to a history of non-unionization, freelance writers' employment status and occupational identities, the organization of freelance labour, the cultural legacy of Canadian magazine publishing, and the broader political, economic, and cultural climate in which freelance writers work. The rest of this paper discusses these challenges and examines three organizing models.<sup>6</sup>

## CHALLENGES TO ORGANIZING FREELANCE WRITERS

The most obvious challenge to collectively organizing freelance writers is organizing people who do not work for a single employer or in the same location. Freelance writers work alone, usually in their homes, isolated from one another. Most freelancers do not know other freelancers; their closest industry contacts are usually editors, an arrangement that makes it difficult for organizations to recruit writers. In addition, freelance writing is a fluid occupation. People shift in and out of freelance status, limiting a proper count of how many freelancers exist and preventing organizations from developing an accurate estimate of the numbers needed to recruit a critical mass large enough to force publishers to bargain.

Another challenge to organizing freelancers relates to what Brophy (2008:7) identifies in other knowledge-worker sectors as an absence of a "collective memory of struggle," or the fact that freelance writers have no "tradition of trade unionism upon which to draw" (Leab 1970:17). Although cultural workers in North American film, animation, and media industries have a long and at times militant history of collective organizing, bargaining, and strikes (see, for example, Gray and Seeber 1996; Sito 2006; Mosco and McKercher 2008), writers have not generally turned to trade unions to address their labour challenges.<sup>7</sup> Journalists employed in large organizations have been unionized for decades, but many freelance writers have chosen not to work in a newsroom, distancing themselves from unions and even maintaining antagonistic relationships with

staff journalists, who in their own interests have tried to limit the amount of work contracted to freelance writers (PWAC 2006:8).

Journalists, whether by their own career aspirations or by publishers' influence, have historically identified as professionals, which has limited the organizational forms these workers have sought out. Journalists began claiming professional status around the birth of the commercial press in the late eighteenth and early nineteenth centuries, when the work of reporting was comparable to factory work in terms of pay and job security (Soloman 1995:129). While newspaper journalists sought professional status to improve their working conditions, their employers embraced journalistic professionalism as a calculated business strategy. To expand mass readerships in order to increase advertising sales, publishers promoted a vision of professionalism that emphasized objective, detached, unbiased reporting, a vision that pushed reporters to align themselves with publishers' interests rather than with those of other newsroom workers, such as printers (Carey 1969; McChesney 2008).

Journalists' occupational ideology stressed individual action and reinforced the notion that hard work and good luck would lead to fame, or at least middle-class professionalism and career mobility (Leab 1970:8, 32; Salcetti 1995:70-1; Brennen 2004). The profession of journalism came to be understood as irreconcilable with the collective nature of organized labour (Soloman 1995:127-28). The legacy of journalistic professionalism includes the expectation that writers have a commitment to their work that goes beyond financial gain. "Thus," write Kates and Springer (1984:247), writers "are supposed to care more about the work than about money, and collective bargaining for better wages would be seen as lowly and unprofessional." A deference to professionalism has combined with what Ross (2000) calls the "cultural discount," adopted by cultural workers whose idealized notions of autonomy and desire for gratifying work lead them to willingly discount the cost of their labour in the hopes of future rewards.

This legacy of professional and artistic labour, combined with the organization of freelance work, can obscure relations of exploitation. Although writers work alone, they closely collaborate with editors, who mediate between writers and the publishers who set rates (or the budgets rates are paid from) and dictate the terms of contracts. The writer-editor relationship is creative and, for many writers, enjoyable. The pair works together from a story's conception to the published piece, a process that can take months. Because of this close relationship, many writers find it difficult to engage in negotiations over fees with editors. This fear of damaging creative relationships is a barrier against writers taking a stand against publishers. Even an experienced writer who is an outspoken advocate for writers' rights says that he hesitates to risk straining his relationships with editors: "[I worry] that I might alienate valuable existing

clients in an industry that is so very, very small" (personal communication, 2010).

The cultural importance assigned to Canadian magazines, where freelance writers have traditionally published, has also shaped how writers respond to work-related challenges. The dominant narrative about magazines in Canada is that they have historically been labours of love founded to foster the development of a distinctive Canadian culture (see, for example, O'Leary 1961; Barbour 1982:40; Woods Gordon 1984). This discourse of nationalism and cultural importance assigned to magazines—perpetuated by publishers, governments, academics, and writers themselves—has served to obscure the experiences of writers as workers and has rendered questions about working conditions un-askable. Those who do ask receive a refrain all too common in magazine publishing throughout the decades: "we just cannot afford it" (Barbour 1982; Woods Gordon 1984:71; Wilson 2010:27). Even as magazines have become integral parts of publishing conglomerates—Canada's magazine publishing industry was worth US\$1.03 billion in 2009 (OMDC 2010:4)—the cultural importance assigned to them persists and many writers report feeling lucky to be able to make a contribution to Canadian culture.

The term 'free lance' originally described professional soldiers who sold their services to any army, maintaining "no permanent connections or professional obligations" (Rogers 1931:246). Contemporary freelancers have traded the lance for the keyboard, yet the notion of independence associated with the concept of freelance remains. In my survey, I asked 193 writers how effective they thought a labour union could be in protecting self-employed writers. Eight percent said "very effective," 38 percent said "somewhat effective," and 39 percent said "not effective" (15 percent had no opinion). When asked to list the most effective way for freelance writers to address challenges they face, 46 percent of writers selected "learn how to adapt and best manage as an individual" (only 10 percent selected "form a union to collectively bargain").

It is an industry dictum that journalism attracts individual-minded people (see Drobot and Tennant 1990; Titus 1950 for examples), but it is also structural competition—freelance writers are in direct competition with one another for limited assignments—fuelled by the fleeting promise of "making it" and the attendant rewards success can provide that constrain possibilities for collective organization (Kates and Springer 1984:247). The organization of freelance labour prevents writers from identifying the challenges they face with those of other writers, limiting the ability to accurately depict the causes of the problems writers are confronting. This can be the difference between identifying low rates of pay with personal failure or as an inevitable fact of freelancing, versus identifying low rates of pay as an employer practice of exploitation.

To address these conditions, various approaches to organizing have emerged in Canada. The rest of this paper examines three dominant organizing models that have developed and considers their implications.

## THE PROFESSIONAL ASSOCIATION

Dozens of small professional associations for writers exist in Canada, but the largest is the national Professional Writers Association of Canada (PWAC), which has about 700 members and twenty-two chapters across the country. PWAC's goals include promoting professional standards; encouraging good fees for writers; offering members professional development and networking opportunities; advocating on behalf of writers (to publishers and governments); and connecting writers, who often work in isolation (PWAC 2006:9). These activities are in line with those typically pursued by the professional association model, which is committed to "establishing, maintaining, and enhancing professional identity" (Hurd 2000:12). Unlike associations of regulated professions such as medicine or law, PWAC does not set educational standards and professional criteria nor provide licences to control access to the labour market (*Ibid.*), but over the years its activities have extended beyond professional development and advocacy.

Although currently operating on a professional association model, which tends to cater to workers on an individual basis (Hurd 2000:14), PWAC's initial orientation focused on writers' economic relations with publishers. The group formed in May 1976 as the Periodical Writers Association of Canada, with 75 members. PWAC aimed to formalize the casual, individualized nature of freelance writing, to improve writers' abilities to earn decent livings, to provide freelancers with a professional designation, and to build a collective voice.

Archival records reveal a spirit of collectivity and resistance in PWAC's early years. Members formed and were active in grievance and negotiations committees, and meeting minutes contain terms such as "rank-and-file" and "exploitation." A founding member suggested the group be called The Periodical Writers' Union of Canada (PWAC 1976; 1976-78; 1976-77). PWAC developed a code of ethics and a model contract that included what were, at the time, "unheard of protection[s] for writers" (Kates and Springer 1984:239), including fees for rewrites, "kill fees" for articles written but not published, and payment schedules.

Throughout the late 1970s, PWAC negotiated its new contract with nineteen Canadian magazines. The organization aimed to eventually engage in collective bargaining and twice threatened strike action, against *Weekend* and *Chatelaine* magazines (*Ibid.*:239). Its grievance committee was strong and won most of its challenges against magazines that had mistreated writers. By the 1980s, PWAC's original leadership stepped down, largely due to volunteer burnout, but also

because of a disagreement with the membership over how political the organization should be (*Ibid.*). PWAC's direction shifted away from militant worker action toward professional development and providing group insurance. The emphasis on collective bargaining faded. As Kates and Springer (*Ibid.*) write, "People had wanted better wages and working conditions and the contract that would ensure this, but they did not want to call the organization a union or to be identified with union practices."

In 2005, with 600 members, PWAC changed its name to the Professional Writers Association of Canada, acknowledging writers' inability to earn an income solely from periodical writing and cementing the organization's new direction. Since then, executive directors, staff, and the board have worked to professionalize PWAC's governance model, moving further away from being a member-driven organization toward one under which paid staff have autonomy to conduct the organization's business (staff are accountable to an elected national and regional board of directors, while members can participate in volunteer committees). A PWAC staff member explains the organizational shift: "We've moved from being antagonistic toward publishers and editors to being an ally and a partner in the industry." This means avoiding "demonizing" publishers or adopting an "adversarial attitude" (personal communication 2010).

Under this cooperative vision, PWAC wants to be viewed as a partner in developing industry-wide solutions rather than a confrontational group defending only writers' interests (PWAC 2006). So, while PWAC participates in boycotts of publishers that present unfair contracts and mediates non-payment or copyright complaints for individual members, it also cooperates with industry on projects it hopes will improve writers' conditions in the long term.

PWAC's primary role is advocacy. When rights-grabbing contracts first emerged in the 1990s, PWAC negotiated with publishers and won some changes to contracts. PWAC has participated in consultations and made submissions to the government on copyright reform, promoting the protection of creators' rights in copyright legislation (PWAC 2006:35). PWAC helped freelance journalist Heather Robertson settle two class-action lawsuits. The first, launched in 1996 after *The Globe and Mail* published Robertson's articles in three electronic databases without her permission, was settled in 2009 with \$11-million paid to Robertson and other freelancers. The second lawsuit, *Robertson v. ProQuest, CEDROM, Toronto Star Newspapers, Rogers and CanWest*, was settled for \$7.9 million in May 2011. Although these settlements have put some money in freelancers' pockets and represent an acknowledgement that writers should be compensated for multiple use of their works, Michael O'Reilly, a past president of PWAC and current president of the Canadian Freelance Union, notes that the lawsuits deal with past practices and in fact may have spurred the proliferation of contracts that demand multi-platform rights (personal communication 2010).



Although PWAC (2006:22) reports that its members earn an average of nearly \$5,000 more per year than non-members, the organization has not had success in raising writers' rates overall. Its early writer-centred model contract faded from use (Kates and Springer 1984:243), and PWAC has since tried with little success to enforce a voluntary contract (Lorinc 2005:55). It has lobbied industry and governments on issues of payments and rights for writers and has produced research on rates and industry best practices (PWAC 2006; Scott 2009). PWAC has supported industry's efforts to increase government funding for the magazine sector, with hope that publishers' profits will trickle down to writers (PWAC 2006:17). In line with its support for the industry as a whole, PWAC is sympathetic toward publishers, especially publications not owned by large media conglomerates (personal communication 2010).

The maintenance of "cordial relations" with employers is characteristic of the professional association model (Hurd 2000:13; Benner 2003), but has limited how far PWAC can push for writers' rights and can obscure the labour relations involved in writer-publisher relationships. Although PWAC provides important resources to writers and has been a critical voice in lobbying government on copyright issues, it primarily serves writers on an individual basis, often reinforcing the individualizing tendency of freelance writing as an occupation. PWAC's vision for its future is to focus more intently on assisting writers in self-promotion and individual career development. As its 2009 annual report notes, PWAC plans to shift focus "inward" to improve member services "and help PWACers become better entrepreneurs" (6).

With their mandate to help members become individually competitive, professional and self-reliant, professional associations risk following the same logic employed by industry and neoliberal capitalism, which fosters flexible workers who can adapt to industry whim, who take initiative to upgrade skills and knowledge, picking up slack from companies and from the state, both of which take increasingly little responsibility for workers. It is even possible, as Benner's (2003) examples of knowledge and technology workers in Silicon Valley demonstrate, that professional associations can encourage industry to withdraw from investing in and supporting workers. Collaboration with industry can mask the sorts of antagonisms that lead to action for change.

The greatest limitation facing PWAC as an organization that represents writers is that it is not established to collectively bargain, which is a weakness of the professional association model in general (Hurd 2000; Benner 2003:203). PWAC has been certified under the federal *Status of the Artist Act* as a bargaining agent for freelance writers, but the vast majority of writers' clients fall under provincial jurisdiction, rendering the federal act somewhat ineffective for this group of workers (the provincial *Status of Ontario's Artists Act*, which is much weaker, makes no provisions for collective bargaining.). PWAC's membership is small and experiences high turnover. One commentator describes PWAC as

providing “little more than handholding services to new writers” (Wilson 2010: 31). This will have to change if PWAC wants to improve the collective condition of freelance writers. OReilly notes that PWAC has had ongoing discussions with publishers about raising rates and improving contracts. “[Publishers] were always willing to talk but in the end they were never willing to do anything,” he says. During a meeting with a senior editor of Torstar,

[...] we were making progress but he said to me, “if I sign this and we come to an agreement, there’s no way for you to enforce it on your side, you have no ability to tell your members to do anything.” I danced around the subject, but ultimately he was bang on (personal communication 2010).

Experiences like these led OReilly and other PWAC members to conclude that freelance writers need a union.

## THE UNION

Established in 2009, the Canadian Freelance Union (CFU) is the first trade union for media freelancers in Canada. It aims to improve the economic status of freelancers, mainly writers, but also photographers, editors, online writers, and web designers. The CFU is Local 2040 of the Communication, Energy and Paperworkers Union of Canada (CEP), a 150,000-member private-sector union with a large media component, including telecommunications, broadcasting, print, and new media workers. The CFU’s goal is long-term: to build collective power by organizing all freelance media workers in Canada and to engage in collective bargaining with publishers for minimum standards and rates. Members will then be encouraged to negotiate beyond that minimum, similar to the way creative worker unions in the film industry operate (see Gray and Seeber 1996).

The CFU follows a model of unionism that some have argued is necessary for knowledge workers in “boundaryless” workplaces (or no workplaces at all). Benner (2003:182) notes that as flexible and atypical employment relationships proliferate and trade union membership declines, workers are moving toward “occupational communities,” or groups of workers who share skills and labour market experiences rather than the experience of working for the same organization. These workers, Stone argues (2004:219), can be well served by a revived model of craft unionism, as workers in contemporary capitalism need a model of unionism that enables working for multiple employers in multiple establishments. As Stone (*Ibid.*) writes, “new craft unionism is an occupation-based form of unionism that bargains with industry-wide employer groups to establish minimum standards and provide training, while enabling employees to

move freely between employers in the industry.” The cultural industries have a tradition of this form of unionism.

The CFU began in the mid-2000s as a campaign of the CEP, when members began thinking strategically about the large numbers of media workers becoming unemployed and turning to freelancing for income, acknowledging the pressing need for media unions to organize the growing freelance labour force. The initial campaign recruited 600 charter members to gauge interest levels among writers, and writers seemed excited about the potential of a union. Conditions for freelancers had become so poor, OReilly argues, that freelance writers were finally ready to form a union (personal communication 2010). The CFU was inaugurated in October 2009 and began the difficult task of signing up full-fledged, dues-paying members. Because of the fluid nature of the occupation, it is difficult to count the number of people working as freelance writers, but OReilly estimates there are 10,000 in Canada, including many who freelance part-time or occasionally, and that this number is increasing. However, as of May 2011, the CFU had recruited just under 200 members.

The CFU’s small executive, all working freelancers, recruits through one-on-one discussions, over email, and by speaking at writers’ events. It has negotiated joint membership agreements with PWAC and provincial writers’ associations, and has used their networks to promote the union. Once the CFU has signed a large enough membership, it can begin targeting freelancers at particular publications or publishers. The CFU also plans to leverage the power of the CEP: so far two CEP locals have tried to introduce clauses into agreements with newspaper publishers that all freelance work would have to be CFU labour—effectively creating a closed shop, similar to the arrangement the Canadian Media Guild has at the CBC—but this has up to now been unsuccessful, as this strategy requires a larger, more influential membership.

Presently, the CFU offers writers benefit packages and grievance services; press passes (without an employer, it is difficult for freelancers to obtain media accreditation); contract advising; and a web forum for member discussion. Soon it plans to offer electronic professional-development sessions. While there is some overlap with PWAC services, the CFU is more attentive to labour relations and employment issues, and will have the strength of the CEP behind it to engage in advocacy and bargaining. Both PWAC and the CFU envision the organizations working together, although the CFU aims to be more confrontational than PWAC. OReilly recognizes the power dynamics structuring the experiences of freelance writers and links declining rates and rights-grabbing contracts to media concentration and business strategies of profitable publishers. He recognizes that writers have a long history of lobbying for rates increases, predominantly through PWAC, but argues that concrete gains can only be accomplished through collective bargaining. He wants to see writers’ rates tripled and for contracts to fairly compensate writers for copyright grabs.

Publishers can afford this, he argues. Just over five percent of the total operating cost of Canadian magazines is devoted to freelance fees, and freelance fees represent about eighteen percent of magazines' total remuneration (Statistics Canada 2005).

The CFU faces challenges, of course, primarily the difficulty in organizing thousands of writers spread across the country who have varied interests and experiences. Because writers work alone, usually in their homes, locating potential members is a major challenge. An unexpected challenge is that writers are frustrated with the slow-moving process of organizing a union. Many feel they cannot wait for the long-term strategy to be deployed and are looking for a faster solution to the problems they face (O'Reilly, personal communication 2010). Others expect the organization to be up and running, ready to be able to make concrete changes, before joining. As one survey respondent notes, "When the [CFU] actually achieves [...] a decent contract for freelancers that is binding on newspapers and magazine publishers, I will join." This demonstrates a lack of understanding of the process of building a union, which can be long and difficult but always requires the active participation of members. Most freelancers are used to being members of service organizations that do not require active participation or revolve around collective action. Other writers are concerned that the CEP has not invested enough resources to effectively establish the CFU and develop it into a powerful enough group to take on publishers. However, for that, it needs the strength of thousands of writers behind it.

## THE AGENCY-UNION PARTNERSHIP

Those who want a quicker fix have turned to the newest organization that has emerged to help freelancers: the Canadian Writers Group (CWG), the first author agency in Canada to represent freelance journalists who write for periodicals and newspapers. Launched in May 2009 by Derek Finkle, a freelance journalist and former magazine editor, the CWG is modelled after traditional book agencies, which emerged in the 1840s in Britain and the United States to fill writers' needs for "something resembling a trade union" (West 1988:78). Agents serve as intermediaries between publishers and authors, negotiating contracts and rates. Since book agents do not deal with magazines and newspapers, Finkle saw not only a new approach to responding to freelancers' payment problems, but also a business opportunity. His recruitment email, posted in September 2008 on an email list for Toronto-area writers and editors, announced that he was seeking "Canada's most talented, in-demand freelancer writers." By March 2009, Finkle had two hundred applications from writers, from which he selected fifty people to represent. The CWG has since grown to represent 95 writers (Finkle 2010). The agency negotiates rates and contract terms for its writers, charging a percentage commission. For an additional \$350, writers represented by the

agency receive a profile on the CWG's website to promote themselves to potential clients (*Ibid.*).

Finkle's agency model presents some interesting tensions. On the one hand, Finkle understands that writer-publisher relationships are built on a foundation of asymmetrical power relations that favour bottom-line driven corporations (personal communication 2010). He argues that publishers pay writers poorly because they can get away with it: publishers "choose not to afford it," he says. "When they say they don't have the money [...] what they're saying is, 'We've chosen not to spend the money on writers'" (cited in Carraway 2008). He often employs the language of collectivity, which has historically been the domain of unions, and he is not against his writers withholding their services from a publisher to achieve better pay and contracts (Finkle 2010). Part of his vision is to represent all the writers at a particular publication, then negotiate CWG-specific contracts with that magazine, which mirrors collective bargaining practices and closed-shop models, and echoes the CFU's goals.

However, unlike a union, a literary agency is a privately owned, for-profit enterprise. While unions have democratic mandates to bring equity to all members, a literary agency selects a few authors to represent, usually authors who can provide the highest return on an agency's investment of time and resources. Whereas a union emphasizes solidarity and a collective understanding of workers' struggles, an agency model can reinforce the individualism and competitiveness already entrenched in the labour experiences of freelance writers. The CWG's roster represents a small slice of writers, what Finkle calls "top level" freelancers (personal communication 2010): writers who have experience, a good reputation, and already earn among the highest rates in the industry. This arrangement has some writers concerned that the agency could cement already-existing inequities, with a few writers earning decent livings and the majority struggling.

Finkle feels no responsibility to represent all freelance writers in Canada. He has negotiated contracts at several magazines that are only used for his writers (personal communication 2010). Theoretically, other writers could demand these contracts, but it is not in the agency's interest to publicize this information to the entire freelance population. In this way, an agency model can keep writers in competition with one another rather than removing elements of competition between workers, as unions aim to do.

The development of the CWG took a unique twist in the Fall of 2010, when it partnered with the Canadian Media Guild (CMG), a 6,000-member media union that is a local of Communication Workers of America-Canada (part of the 600,000-member North American union, the Communication Workers of America). Although it won the right to represent freelancers at the CBC in 1981, until it partnered with the CWG, the CMG had not been able to represent other freelance media workers. By the summer of 2010, Finkle realized that he could

not run a business and head the advocacy effort required to make changes to writers' circumstances, and the CMG was strategizing on how to renew its efforts to organize freelance writers (the CMG had previously been in discussion with O'Reilly, until he partnered with the CEP, leaving frosty relations between the two unions over freelance writer organizing). The CMG provided investment money to Finkle and the two groups formed an alliance.

Now, any writer can join the CMG's freelance branch and CWG writers automatically become CMG members. For \$150 in dues, writers have access to CMG's benefit plans and other union resources, but they do not receive representation from Finkle. The CMG now has access to a growing segment of the media labour force and can rely on the status of Finkle's agency to attract freelance writers that the agency does not want to represent. At the same time, Finkle's agency has access to the resources of a large union: legal council on retainer, access to a strike fund, and advocacy power. Together, the CMG and CWG have set up Story Board, a website devoted to freelance writer issues, but Finkle keeps these advocacy efforts separate from the website that potential agency clients visit (Finkle 2010). The organizations have also commissioned a study of digital rights in other cultural industries and want to establish committees of writers to investigate and advocate on certain issues. Finkle feels that he has addressed charges of exclusivity by enabling freelancers to join the CMG, but those writers who belong to the agency and those who belong just to the CMG are, technically, members of separate and very different organizations—one that provides star writers with individual support and negotiations and another that operates on union principles and aims to one day collectively bargain, creating competition with the CFU for a group of workers who are difficult to organize.

## CONCLUSION

It is too early to fully assess the implications of the agency-union partnership model and its effects on freelance writers and worker-industry relations, but its arrival means that there are now three organizations vying for freelance writers' time, allegiance, and dues, along with dozens of smaller associations and informal networks across the country attempting to address writers' issues. Several writers who responded to my survey noted that they did not understand why so many writers' organizations exist and were unable to delineate the differences between them. Many commented that the primary reason they did not belong to an organization was because dues were too high. Although both the CFU and the freelance branch of the CMG aim to one day collectively bargain with publishers, the two unions are not currently working together and are now competing for members, which points to tensions between the groups' parent unions, the CEP and the Communication Workers of America Canada, to which

the CMG belongs. And as McKercher (2009:373) astutely notes, when writers' organizations compete against one another, it is not freelance writers who will win.

As I discussed earlier, however, the challenges to organizing freelance writers extend beyond organizational models and the sheer number of groups that exist. That the literary agency model has been heralded by writers as the most effective solution for freelancers (Wilson 2010), and that the professional association model has historically been writers' preferred model, underscore the occupational identity of freelance writing, which is bound up in notions of professionalism and artistic labour and shaped by the current neoliberal cultural climate, which idealizes the individual, entrepreneurial worker and undermines the very notions of solidarity and struggle upon which collective organizing is based.

Hurd (2000:1) observes professional workers' general ambivalence toward trade unions. If they organize collectively, he argues, it is usually into professional associations and even if they do engage in collective bargaining, they often name their organizations 'guilds,' identifying with craft unions instead of industrial unions. Osnowitz (2007:466) argues that for freelance cultural workers, a union can represent "bureaucratic structures, with narrow jobs that few freelancers claimed to be seeking." Associations, on the other hand, "underscor[e] the fluidity and individual agency inherent in an employment relationship [...] open to frequent negotiation as freelancers mov[e] from one assignment to the next."

Experiences of stagnating wages, restrictive contracts, and a general lack of control have exacerbated this aversion to collective bargaining. These experiences have intensified freelance writers' feelings of declining individual power, which translates into a feeling of declining collective power. As Kates and Springer (1984:246) note, "the feeling of marginality is a powerful internalized weapon for keeping people from being active in their own interest." Feelings of isolation and individualization are often the reason why writers tend to seek individual solutions to problems they face.

These conditions are heightened by experiences of living and working under a culture of neoliberal capitalism, which emphasizes individualism, entrepreneurship, and self-sufficiency, a discourse that, as Harvey (2005:3) notes has "pervasive effects on ways of thought to the point where [these ideas have] become incorporated into the common-sense way many of us interpret, live in, and understand the world." Indeed, when I asked writers participating in my survey to list words that best describe the character of freelance writers, their top choices included 'independent,' 'entrepreneurial,' 'flexible,' 'hard working,' and 'self-motivated,' suggesting some qualities that are in tension with those needed for collective organization.

These challenges are not insurmountable, but they will need to be addressed if writers' organizations in Canada want to build the collective power needed to change their circumstances. From his discussions with writers, O'Reilly believes that assumptions about the incompatibility between writers and unions are shifting. Things have become so bad, he argues, that writers are ready to organize collectively (personal communication 2010). Indeed, copyright is one area in which writers have indicated that they are willing to support collective bargaining (PWAC 2006:41). And although only 42 percent of respondents to my survey indicated that they would join a union, most acknowledged that a union could be "somewhat effective" in copyright negotiations and improving pay. Perhaps it will take concrete examples to demonstrate to writers that organizing freelancers can, in fact, be done. For example, in January 2011, The Writers Guild of America, East successfully organized freelance writers and producers at two companies that produce reality television, a notoriously difficult sector to organize (Jaffe 2011).

The most effective approaches will be those that can break down the individualism and structural competition that characterize the occupation and foster an understanding of freelance workers *as workers*, whose precarious employment status is critical to the business strategies of media firms. Freelance media workers, who have managed to de-link themselves from the direct control of firms, could be in a position to redefine their autonomy and make a meaningful contribution to the labour movement and to the future of Canadian cultural production. To do so, however, freelance writers need to organize.

## NOTES

- <sup>1</sup> Thank you to Stephanie Ross for productive editorial suggestions and insights, and to two anonymous *Just Labour* reviewers for helpful comments on an earlier version of this paper. Any errors or omissions remain my own.
- <sup>2</sup> In the year represented by PWAC survey data, a full-time reporter at a major metropolitan newspaper such as the *Ottawa Citizen* or *Montreal Gazette* earned at least \$63,500 (McKercher 2009:371) and after-tax average income for non-elderly men in Canada was \$32,000 and for non-elderly women, \$30,100 (Statistics Canada 2011b).
- <sup>3</sup> Writers have been protesting The Huffington Post's use of unpaid labour. The site's sale to AOL spurred online protest campaigns by writers' groups, the Communication Workers of America called for a strike, and a group of bloggers launched a class action lawsuit against Huffington Post founder Arianna Huffington, claiming that US\$105 million should be paid to writers (Tsui 2011).
- <sup>4</sup> One exception are freelancers for the CBC, who are members of and whose contracts are negotiated by the Canadian Media Guild, thanks to a labour board decision in Québec in 1982, when CBC freelancers needed to work on the public broadcaster's premises in order to use its equipment and therefore could be considered employees (cited in Vosko 2005, 222 n. 18).



- <sup>5</sup> A scale agreement is defined by the Canadian Artists and Producers Professional Relations Tribunal (2010) as “a written agreement between a producer and an artists’ association which sets out the minimum terms and conditions for the provision of artists’ services and other related matters.”
- <sup>6</sup> This paper draws on a survey of 200 Canadian freelance writers, interviews with representatives of three writers’ organizations, participation in a freelance writer email list (all writers are quoted with permission), archival records, and secondary sources.
- <sup>7</sup> There are, of course, exceptions that may be instructive examples for organizers. Gopsill and Neale (2007) review British journalists’ experiences and Friedman (1991) examines the National Writers Union in the US. In Canada, radio, film, television and digital-platform writers are represented by the Writers Guild of Canada.

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